

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

VERNA IP HOLDINGS, LLC,

Plaintiff,

v.

ALERT MEDIA, INC.,

Defendant.

C.A. No. 6:21-cv-00422-ADA

JURY TRIAL DEMANDED

VERNA IP HOLDINGS, LLC,

Plaintiff,

v.

ALERT MEDIA, INC.,

Defendant.

C.A. No. 6:22-cv-00387-ADA

JURY TRIAL DEMANDED

ALERT MEDIA, INC.’S NOTICE OF SUPPLEMENTAL AUTHORITY

On August 16, 2023, the Northern District of California granted a motion for attorneys’ fees under 35 U.S.C. § 285 in *Escapex IP LLC v. Google LLC*, Case No. 22-cv-08711-VC (N.D. Cal.), Dkt. 41 (the “Escapex Case”). The same lead counsel represents Verna IP Holdings, LLC (“Verna”) in the present case and Escapex. Alert Media, Inc. (“Alert Media”) hereby provides the Order Granting Motion for Attorneys’ Fees Under 35 U.S.C. § 285 (“Order”) in the Escapex Case as supplemental authority in support of Alert Media, Inc.’s Motion for Exceptional Case filed in both the above captioned cases. (6:22-cv-00387-ADA, Dkt. No. 21; 6:21-cv-00422-ADA, Dkt. No. 53.) Just as in the present cases, the court in the Escapex Case found that it was “obvious that [plaintiff] conducted no serious pre-suit investigation and that this case was frivolous from the start.” (Order at 1.) Also much like the present cases, “[defendant] placed [plaintiff] on notice of

the baselessness of its claim early and often, urging it to dismiss the case.” (*Id.*) In a similar pattern between the present cases and Escapex Case, at the end of both cases, counsel for the plaintiff filed dismissal papers without agreement from the defendant in an effort to avoid 35 U.S.C. § 285. (*See* Order at 2; 6:22-cv-00387-ADA, Dkt. No. 21 at 5.) The court in the Escapex Case further explained that counsel’s conduct could have warranted sanctions. (*See* Order at 2 (“Although this case would be exceptional under section 285 in any event, [plaintiff] certainly poured dirt on itself by engaging in this litigation misconduct. The attorneys for [plaintiff] are lucky that [defendant] did not separately ask the Court to impose sanctions on them.”).)

Accordingly, Alert Media hereby submits that the Northern District of California’s Order Granting Motion for Attorneys’ Fees Under 35 U.S.C. § 285 in the Escapex Case further supports Alert Media’s Motion for Exceptional Case.

Dated: August 21, 2023

FISH & RICHARDSON P.C.

By: /s/ David B. Conrad

Neil J. McNabney
mcnabney@fr.com
Texas Bar No. 24002583
David B. Conrad
conrad@fr.com
Texas Bar No. 24049042

1717 Main Street, Suite 5000
Dallas, Texas 75201
(214) 747-5070 (Telephone)
(214) 747-2091 (Facsimile)

**ATTORNEYS FOR DEFENDANT
ALERT MEDIA, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 21, 2023, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ David B. Conrad
David B. Conrad